

Remarks

As argued in the previous response, regarding the remaining references, as admitted by the Examiner, none of the references discloses a packet of tissues having a square front face and a square rear face as required by the claims. Instead, as shown in the drawings, each of the products disclosed in these patents is rectangular-shaped. Moreover, there is no teaching or suggestion in any of the art cited by the Examiner that would lead one of ordinary skill in the art to modify that which is disclosed into square-shaped paper tissue products. Moreover, a rectangular-shaped tissue product does not provide the unexpected results found in the packet of stacked square-shaped absorbent paper tissues recited in the claims. As set forth in the specification of the present application, “[t]he parallelepipedal format of the packet 20, with square frontal faces 22 and 24, makes it possible to improve rigidity. Thus, it is more rigid and retains its shape when stressed.” (P. 5, lines 17 - 19.) Specifically, when tissue packets of the present invention are compared to packets having rectangular-shaped faces under the described conditions, the tissue packets of the present invention have a resistance to crushing of at least about 2.5 times that of the prior art packets. (P. 5, line 21 - p. 6, line 17.)

The Examiner responded to these arguments asserting that “One of ordinary skill in the art would find a square package more suitable for holding square contents to prevent extra compartmental space and to save material cost.” The Examiner goes on to assert that “the contents within the . . . square shape package would rigidify the entire package because the lack of movement.” The Examiner’s argument is circular and, as such, does not establish that the claims are obvious. First, it is true that given a square

package, the contents of the package should be square. Second, it is true that if the contents to be wrapped in a package are square, the package should also be square. In this case, however, the Examiner has failed to cite a single materially relevant prior art reference disclosing a square package. Moreover, the Examiner has failed to cite a single materially relevant prior art reference disclosing a square paper product that would be contained in a package. Instead, the Examiner is arguing that a square package would suggest square contents, and square contents would suggest a square package. As such, the Examiner has failed to establish that the claims are obvious.

The Examiner bears the burden of establishing a *prima facie* case of obviousness. At this point, he has done nothing more than engage in impermissible hindsight.

As articulated by the Federal Circuit in the recent decision *In re Lee*, 277 F.3d 1338 (Fed. Cir. 2002):

When patentability turns on the question of obviousness, the search for an analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. . . Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. . . particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.

The Examiner has not rigorously applied the requirements for a showing of motivation and explained, with particularity, why one of ordinary skill in the art would change the structure of a tissue package from rectangular to square.

Thus, for at least the reasons set forth above, claims 16 - 22, 30, and 31 are allowable over the cited art and withdrawal of the rejections are respectfully requested.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicant's invention. It is respectfully submitted that the entering of the Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

Conclusion

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

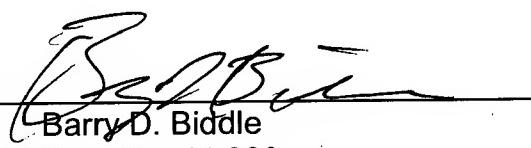
Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

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Dated: April 28, 2004

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